IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.648 OF 2006

WITH

APPEAL FROM ORDER NO.336 OF 1999

Smt.Pushpa Vazirchand & Ors. ...Applicants

Versus

Smt.Lakhan Bhagwandas Madhyan & Ors....Respondents

.....

Mr.Yatin R.Shah for Applicants.

Mr.N.V.Vimadalal for Respondents.

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CORAM: A.M.KHANWILKAR, J.

JULY 19, 2006.

P.C.

1. Heard Counsel for the Applicants.

2. This Application is essentially for recall of order passed by this Court admitting the Appeal from Order on 1st September 1998. The ground mentioned in the Application is that the Appeal from Order is not maintainable in law. Such proceeding has been taken out by the Appellants, which is abuse of process.

3. This Application was notified yesterday on the Board. However, as none appeared for the Respondents/original Appellants, though appearance was shown on the Board, hearing of the Application was deferred till today with request to the Advocate for the Applicants to intimate the Advocate on record for the Respondents/original Appellants in the Appeal from order. Accordingly, notice has been given to the Advocate for the Respondents.

4. Till the Applicant was heard and this order was dictated up to this stage, none appeared for the Respondents/original Appellants. Now Mr.Vimadalal appears before the Court and prays that two weeks time be granted. According to him, he will have to place on record that the present proceeding is abuse of process of Court. I see no propriety in acceding to this request of adjournment.

5. Assuming that the Appellants are right in contending that the affidavit in support of the subject Application has been filed by the unauthorised person, the fact remains that the

Appellants will have to justify the maintainability of the Appeal and satisfy the Court on that issue. The order which is impugned in the Appeal from Order is dated 8th September 1997 passed by the IInd Additional District Judge, Kalyan in Misc.Civil Appeal No.272 of 1996 dismissing the Appeal preferred by the Appellants. The said Appeal was preferred by the Appellants against the order passed by the Trial Court dated 21st December 1995 below Exhibit 5 in RCS No.465 of 1994. Said Application Exhibit 5, it is not in dispute, was for interim injunction during the pendency of the suit. Against such proceedings, it is incomprehensible as to how Appeal from Order is maintainable in law.

6. To get over this position, Counsel for the Appellants would contend that the Appellants may be permitted to convert these proceedings into Revision Application. Once again, this submission overlooks the statutory provision that no revision would be maintainable against interlocutory order. Counsel for the Appellants now submits that he may be allowed to convert the Appeal proceedings into Writ Petition. It is not possible to accede to

this request as well. The form of proceedings in Writ Petition is entirely different from the form of proceedings in Appeal from Order. The Appellants will have to carry out drastic amendments to the memo of appeal. That cannot be countenanced.

7. Hence, this Application is allowed. The Appeal from Order is dismissed as not maintainable with observation that the Appellants may take recourse to such remedy as may be permissible by law, which will be decided on its own merits including the argument available to the Applicants herein/Respondents in the Appeal that the course adopted by the original Appellants is abuse of process of law.

8. Application disposed of on the above terms.

A.M.KHANWILKAR, J.